HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.26546 of 2005

Between:

M.Ghantavadhani …Petitioner.

AND

Recovery Officer,

Debts Recovery Tribunal,

Visakhapatnam & another. …Respondents.

:: O R D E R ::

Counsel for the Petitioner : Sri I.V. Radhakrishna Murthy

Counsel for the Respondents : Sri Addepalli Suryanarayana

24th FEBRUARY 2006

Per G.S.Singhvi, C.J.

The petitioner belongs to the creed of those who take loans and other financial

assistance from Banks and other public financial institutions, but do not repay the same and file cases in different courts with a view to delay the inevitable. Sometimes they succeed in persuading the court to pass interim orders restraining the Banks and other public financial institutions from taking coercive steps for recovery of their dues. In many cases, interim orders have been passed by the High Courts and even subordinate courts ignoring the observations made by the Supreme Court in **Titaghur Paper Mills Co. Ltd., v. State of Orissa**, **Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. M/s. Dunlop India Limited**, but the trend of the recent decisions clearly shows that the superior courts have realised the grave consequences of stalling the proceedings initiated by the Banks and other financial institutions to recover their dues, and have held that judicial intervention in such matters should be made only in exceptional circumstances. This trend is clearly discernible from the judgments of the Supreme Court in **State Financial Corporation v. Jagadamba Oil Mills** and **Karnataka State Industrial Investment & Development Corporation Ltd. v. Cavalet India Ltd.**.

We have made a mention of the recent judicial trend in relation to the cases filed by the debtors of the public financial institutions because in this petition we have been called upon to adjudicate the petitioner's prayer for staying the action initiated by ING Vysya Bank Limited (for short 'the Bank') to realize its dues by auctioning the property mortgaged as a security in lieu of the loan and other financial facilities extended to the petitioner.

Although the affidavit filed by the petitioner in support of his prayer for quashing notice issued by the Recovery Officer, Debts Recovery Tribunal, Viaskhapatnam (for short 'the Tribunal') is so articulated as to keep the court in dark about the loan and other financial facilities provided by the Bank to the petitioner and his partners in business, but from order dated 11-1-2005 passed by the Tribunal in O.A.No.224 of 2002 (old O.A.No.46 of 2001 of Debts Recovery Tribunal, Hyderabad), a copy of which has been placed on record by counsel representing the Bank, it is revealed that the petitioner and his associates had taken loan and other financial facilities from the Bank at different stages and executed different documents mortgaging the property as security for repayment of loan etc. It is also revealed that on account of their failure to repay the amount of loan etc., the Bank filed an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the Act') in Hyderabad Bench of the

Tribunal. The same was registered as O.A.No.46 of 2001. Notice of the application was duly served on all the defendants, including the present petitioner, but he did not appear before the Tribunal. On the creation of Visakhapatnam Bench of the Tribunal, the application was transferred to Visakhapatnam. By a detailed order running into 20 pages, the Tribunal allowed the application and directed the defendants to pay different amounts specified in paragraph 10 of the order along with interest @ 12%. The total sum payable by the petitioner and his associates to the Bank was Rs.2,79,94,875.36 ps.

For the purpose of executing the decree passed by the Tribunal, the Recovery Officer issued order of attachment under Rule 48 of the Second Schedule to the Income Tax Act, 1961 restraining the defendants from transferring or, in any manner, encumbering the properties specified in Schedule-C annexed with the order of attachment. Thereafter, he issued notice dated 9-11-2005 for auction of the mortgaged properties.

The petitioner does not appear to have availed the remedy of appeal against order dated 11-1-2005 passed by the Tribunal, but on publication of notice for auction sale of the immovable properties, he filed this petition with the prayer that the auction proposed to be held by the Recovery Officer may be quashed by contending that application filed by him for setting aside order dated 11-1-2005 passed in O.A.No.224 of 2002 is pending before the Tribunal.

After taking cognizance of the averments contained in the affidavit of the petitioner, this Court passed order dated 13-12-2005, which reads as under:

> "This petition involves adjudication of challenge to the notice issued by the Recovery Officer, Debts Recovery Tribunal, Visakhapatnam for auction of the property specified therein for realization of the amount decreed by Debts Recovery Tribunal, Visakhapatnam.
>
> A perusal of the averments contained in the petition shows that as per the petitioner's own showing, a sum of Rs.1,58,81,365.67 ps. is payable by him to respondent No.2. It is also an undisputed position that the petitioner has not paid even a small fraction of the amount decreed by the Tribunal.
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> In our opinion, before entertaining the writ petition it is absolutely imperative to find out whether the petitioner is willing to pay the amount found due against him.
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> Therefore, hearing of this petition is adjourned to
> 14-12-2005 so as to enable the petitioner to furnish an undertaking to pay at

least 50% of the outstanding due."

On 14-12-2005, the Court took cognizance of the undertaking given by the petitioner to deposit half of the amount and passed the following order:

"Heard learned counsel for the petitioner and perused the record.

The learned counsel has filed an affidavit of the petitioner. In paragraph 3 of the affidavit, the petitioner has given an undertaking to deposit half of the decretal amount within a reasonable time to be granted by the Court.

In reply to the Court's query, learned counsel fairly stated that total amount payable by his client is more than Rs.2.00 Crores. He says that his client will be in a position to pay Rs.1.00 Crore within a maximum period of three months, but requests that the Court may fix reasonable time schedule for deposit of this amount.

Having considered the submissions of the learned counsel, we deem it proper to issue notice to the respondents for
27-12-2005 to show cause as to why the writ petition may not be admitted and finally disposed of.

In the meanwhile, the auction scheduled to be held on
15-12-2005 in furtherance of the auction notice issued by the Recovery Officer, Debts Recovery Tribunal, Visakhapatnam, shall remain stayed subject to the following conditions:-

1. Within 3 (three) days from today, the petitioner shall furnish an unequivocal undertaking before the Recovery Officer that he shall pay a sum of Rs.25.00 lakhs to the 2nd respondent – Bank within a period of three weeks from the date of the undertaking;

2. He shall pay another sum of Rs.25.00 lakhs in next 15 (fifteen) days and the balance amount of Rs.50.00 lakhs in next three weeks.

It is made clear that if the petitioner fails to furnish the undertaking in terms of the direction given hereinabove, the Recovery Officer shall be free to move this Court for dismissal of the writ petition.

If the petitioner violates any conditions of the undertaking, then the Recovery Officer shall be free to file an application for initiation of proceedings against him under the Contempt of Courts Act, 1971."

On the next date of hearing i.e., 16-2-2006, Sri Addepalli Suryanarayana, learned counsel for respondent No.2 brought to the Court's notice that the petitioner

has not deposited even a single penny in terms of order dated 14-12-2005. Learned counsel appearing for the petitioner conceded that his client has not complied with the directions contained in the Court's order dated 14-12-2005, but sought adjournment to seek instructions. His request was accepted and the case was adjourned.

Today, we enquired from the learned counsel for the petitioner whether his client had paid Rs.25.00 lakhs in terms of paragraph 1 and Rs.75.00 lakhs in terms of paragraph 2 of order dated
14-12-2005. In reply, Sri I.V. Radhakrishna Murthy stated that his client has not complied with the direction given by the Court. It is thus clear that the petitioner has no intention to repay even half of the amount specified in the order passed by the Tribunal, which as per the admission made by his advocate, is payable to the Bank. Here it is also apposite to mention that even before the Tribunal the petitioner had agreed to compromise the matter but finally did not appear for recording of the compromise.

In our opinion, the petitioner is guilty of highly contumacious conduct and deserves to be non-suited on that ground. He filed a written undertaking to pay Rs.1.00 crore and thereby succeeded in persuading the Court to stay auction scheduled on 15.12.2005, but did not pay a single penny. In this manner, the financial interest of the bank has been jeopardized.

For the reasons mentioned above, the writ petition is dismissed. The petitioner is saddled with costs of Rs.20,000/- (Rupees Twenty Thousand only) because he has dragged the Bank into unnecessary litigation.

If the petitioner fails to pay the costs, the Bank shall be entitled to execute this order as a decree of the court.

The Recovery Officer and the Bank shall now be free to adopt all legally permissible modes including auction of the property for realization of the amount specified in the decree passed by the Tribunal.

G.S. SINGHVI, C.J.

24th February, 2006.

G.BHAVANI PRASAD, J.

ARS / svs